MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, November 12, 2003, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Jon Carlson, Steve Duvall, Gerry Krieser, Roger Larson, Dan Marvin, Cecil Steward, Mary Bills-Strand and Tommy Taylor. Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Becky Horner, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Cecil Steward called the meeting to order and requested a motion approving the minutes for the regular meeting held October 29, 2003. Motion for approval made by Krieser, seconded by Carlson. Motion carried 6-0: Carlson, Duvall, Krieser, Marvin, Steward and Taylor voting 'yes'; Bills-Strand abstaining.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: November 12, 2003

Members present: Carlson, Duvall, Krieser, Larson, Marvin, Steward, Bills-Strand and Taylor.

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 03011 AND CHANGE OF ZONE NO. 3425.**

Item No. 1.1, Comprehensive Plan Conformance No. 03011 and Item No. 1.2, Change of Zone No. 3425 were removed from the Consent Agenda and scheduled for separate public hearing.

COMPREHENSIVE PLAN CONFORMANCE NO. 03011,
DECLARATION OF SURPLUS PROPERTY
and
CHANGE OF ZONE NO. 3425
FROM P PUBLIC USE TO O-3 OFFICE PARK,
ON PROPERTY GENERALLY LOCATED
AT N.W. 12TH STREET AND WEST HIGHLANDS BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: November 12, 2003

Members present: Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward; Larson absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan on Comprehensive Plan Conformance No. 03011, and approval of Change of Zone No. 3425.

Ex Parte Communications: None.

These applications were removed from the Consent Agenda at the request of Commissioner Marvin and had separate public hearing.

Marvin inquired as to whether the city has entered into discussions on potential sale of the property. Steve Hiller, Assistant Director of Parks & Recreation (in charge of the golf program), stated that the Parks Department intends to do that but they have not entered into any discussions at this point in time. This action is to declare approximately five acres of property at the Highlands Golf Course as surplus. It is in an area that is not used as part of the golf course. It is at the far end of the driving range adjacent to N.W. 12th Street. It is quite a distance beyond where golfers would hit their golf balls when using the driving range, and is quite a distance away from the #1 fairway. Therefore, the Parks Departments believes this to be a piece of property that can be declared surplus and the intent is to make it available for sale.

Marvin inquired as to the kind of latitude the city has in selling the property. Must it be sold to the highest bidder? Hiller stated that the Parks Department is working with the Mayor's Economic Development director to determine whether there are any possibilities to use the site as incentive for potential new business coming to Lincoln. Marvin suggested that if the Parks Department were to donate the property for that purpose, then Parks would not get the funds. Have there been discussions on how the city might make up the funds to Parks & Recreation? Hiller stated that he has not been a part of those conversations. This property is owned by the golf fund, which is an enterprise fund, and the intent is to get the full value of the property so that it can be utilized in the golf enterprise fund. A formal appraisal of the property has not been done but it is believed to be valued at $400,000 to $500,000. The property to the south that is zoned O-3 is privately owned.

Carlson inquired whether the Parks Department has a purchaser in mind. Hiller stated that there is none that he is aware of. This action is the formal step to declare the property as surplus and then market the property. The intent of the O-3 is that the Parks Department believes O-3 would be the likely use at this location.

Carlson inquired as to the process once the property is declared surplus. He has seen surpluses that have gone good and bad directions. Rick Peo from the City Law Department advised that the city has the right to sell the property on whatever conditions or whatever they believe to be in the best interests of the city. Declaring the property as surplus does not mean per se that it will be sold – it just removes it from being a restrictive use for public purposes for the city. It just opens up the capability of the city to sell it and generate some of the money back. There are various mechanisms to offer it for sale – RFP, or other avenues. Carlson inquired as to whether there is public participation after that, or whether it is at the Mayor's discretion. Depending upon the value of the property, Peo advised that it must go through an approval process at City Council before it can be sold. Bills-Strand assumes that once the property is sold with O-3 zoning, there is not a whole lot the city can do. Peo responded, stating that the city always has the right not to sell it. If it looked like an inappropriate use, then that is something that can be considered, and the zoning request could be changed, if desired.

Opposition

1. Peter Katt testified as a resident of the Highlands. This is the first that he has heard of the proposed declaration of surplus property. He does not know that the neighborhood association has had opportunity to participate. The city acquired this property from the bankrupt SID and there was extensive public participation and planning in designing and laying out the golf course and the Highlands. It seems premature to determine the zone change. He understands the declaration of surplus, but is O-3 zoning appropriate at this location? How does it connect into the street pattern? He is not aware of any neighborhood opportunity to provide any comments on this action. It seems to be the "cart before the horse" by not having that public participation.

Steward noted that the property is contiguous to an existing O-3 zone, and that is one element of consideration regardless of the zoning request.

Steward inquired of staff regarding notification of this action. Becky Horner of Planning staff stated that the declaration of surplus property and the change of zone were advertised in the newspaper and notice of the proposed action and this hearing was mailed to property owners within 200' of the boundaries of the subject site. Notice was also mailed to the contacts for the Highlands Neighborhood Association.

COMPREHENSIVE PLAN CONFORMANCE NO. 03011
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 12, 2003

Taylor moved a finding of conformance, seconded by Duvall.

Taylor lives in the Highlands. There is already O-3 zoning to the south of this property. He has no problem with the declaration of surplus property.

Marvin indicated that he was "torn". He believes it is in conformance, but he would like the city to inventory its assets like this, and if we can utilize it to attract major employers to come to these sites, then that is a big plus. He hears that there is thought and movement in that direction, but we have to figure out how to reimburse the golf course fund. That fund cannot be shortchanged $400,000, and he is afraid if it is surplused, some of the discussions that would fix that hurdle may be shortchanged and we might wind up selling the property and not get what we could get.

Carlson commented that if Parks recommends the property be surplused, and the Parks Board also recommends that it be surplused, it almost begs the question as to what is the proposed use. It is tough to separate the context of whether it is needed. It if different to separate the potential for future use from "we don't need it anymore". He is concerned about process.

Steward believes the two questions the Commission is being asked are whether it is in conformance and whether it is an appropriate zone. We are not being asked any question about the disposition of the property, and it is not this Commission's business in this particular case. The comments are instructive for others to understand the concerns, but it's technically not a part of the question.

Motion to find the proposed declaration of surplus property to be in conformance with the Comprehensive Plan carried 7-0: Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward voting 'yes'; Larson absent.

CHANGE OF ZONE NO. 3425
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 12, 2003

Duvall moved approval, seconded by Taylor and carried 7-0: Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward voting 'yes'; Larson absent.

SPECIAL PERMIT NO. 1013J,
TO ADJUST THE FRONT YARD SETBACK
TO ALLOW A DRIVEWAY TO BE LOCATED
IN THE FRONT YARD,
ON PROPERTY GENERALLY LOCATED
AT S. 56TH STREET AND HIGHWAY 2.
PUBLIC HEARING BEFORE PLANNING COMMISSION: November 12, 2003

Members present: Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward; Larson absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff submitted a revision to Condition #2: This approval permits a driveway to extend ~~14' 6"~~ 29' 10". The 14' 6" is a number that came from another part of the analysis. This 29' 10" is what the applicant has requested and which the staff recommends be approved.

Proponents

1. Randy Haas presented the application on behalf of Dansid, L.L.C., indicating that they do have support from the Trade Center West Association as well as the neighbor to the south, Kimco Self Storage.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 12, 2003

Bills-Strand moved to approve the staff recommendation of conditional approval, with the amendment to Condition #2 as revised by staff, seconded by Taylor and carried 7-0: Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward voting 'yes'; Larson absent.

WAIVER NO. 03013
TO WAIVE THE LOT WIDTH-TO-DEPTH RATIO
ON PROPERTY GENERALLY LOCATED AT
SO. 43RD STREET AND SOUTH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: November 12, 2003

Members present: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward.

Staff recommendation: Approval.

Ex Parte Communications: None.

Tom Cajka of Planning staff submitted an additional six letters in opposition. The letters argue the points of increased traffic, decreased property values and a change in the appearance of the neighborhood which will have a detrimental effect on the neighborhood.
Proponents

1. J.D. Burt with Design Associates testified on behalf of Alan and Lisa Sasek, the purchaser of this property. He expressed appreciation to the staff for their help, their findings and analysis on this request. This is an attempt to provide an infill project with the existing zoning, with the rather minuscule development of adding 2 single family homes. Thus, Burt is not sure where the discussion comes about this proposal significantly increasing traffic and/or density. He does not know how 2 single family residences do that to an existing neighborhood. The vicinity sketch shows South Street on the north and to the south is Normal Blvd. South Street runs east/west and Normal Blvd. runs diagonal. This creates some extremely deep lots along South Street and along Normal Blvd. This application is associated with an administrative final plat. When submitting the plat, we did not realize there was a width-to-depth ratio problem. The request is for a 6-1 ratio instead of the 5-1 ratio that currently exists, which will provide some ability for an infill project.

Burt went on to suggest that in the bigger picture, if this were a vacant piece of ground, the applicant would probably construct an east/west street that might parallel South Street to Normal Blvd. to provide some more typical lot depths. But, we do not have that–we have existing residences.

Burt noted that during their conversations with Planning, they were asked to set up a meeting with the adjacent neighbors. Ray Hill of the Planning Department attended that meeting and this plan was shared with the neighbors with the intent of asking those neighbors if any of them had a desire to subdivide. Planning's position was that maybe we should not be looking at a plat, but rather a community unit plan and provide another public

access to create more developable lots in the area. There was only one individual that had any desire to do that–a realtor owning several properties to the west closer to 40th Street. His property combined does not allow for a community unit plan.

Carlson inquired whether Mr. Burt would have designs or site plans to show how that would function. Burt did not have any site plans. The Planning Department was the promoter of the neighborhood meeting and the applicant did not have a site plan at that time. The applicant believes this to be a minuscule project that is unobtrusive. The intent was to provide buildable lots.

In response to an inquiry by Taylor, Burt explained that the residence that exists on the property today is a white limestone residence. There is a large residence right next door and there may be some other properties further to the east that are set back.

Bills-Strand inquired whether the small lot on the back would be landlocked. Burt believes the east half of Lot 3 is owned by Lot 5, so it would not be landlocked. Steward confirmed that it would be another L-shaped configuration (owner-wise). Burt concurred.

Opposition

1. Alyson Dreyer, 4245 South Street, testified in opposition, referring to Mr. Burt's letter dated October 28, 2003, which states that, "The neighbors did not indicate opposition to the proposed plat." Dreyer advised that she did express concern about the driveway and putting two houses close together. She also pointed out that a lot of the neighbors did not get letters, i.e. property owners on the other side of South Street did not receive letters and she believes they would have some input with regard to the character of the neighborhood. Dreyer believes this waiver would indeed create undue hardship on the adjacent properties and to the neighborhood. This is a very unique neighborhood. The property owners do have land behind their houses. South Street and Normal Blvd. are very busy and the residents can get away from that by being in their back yards. Putting in more residences will set a precedent for the future. The existing property owners would lose the middle ground behind their houses and they would never be able to get away from the noise being created. These two households may not create a lot of traffic, but it does set a precedent. There is a lot of traffic on South Street. It would definitely take away from the character of this established neighborhood. These property owners have put a lot of money and time into their yards.

2. Virginia Ellis, 4242 South Street, testified in opposition. She has lived in this property for almost 37 years. There can't be any doubt about the density of traffic on South Street and its present problems. Look at the impact of adding heavy construction vehicles, mud, more entrances to the street, more strain on the existing water and sewer lines, and more garbage cans to blow away. This is an established neighborhood and the residents count their blessings for the quality of life with the green spaces that compensate for the traffic. The

owners of the land in question surely knew that the zoning was R-2 when they purchased the property. The City Council has recognized the need for continuity in this neighborhood in the past.

3. Cheryl Rauch testified in opposition on behalf of her mother who lives in the duplex (the other L-shaped lot). She agreed with the previous testimony in opposition. Her concern is one of traffic because South Street is indeed an extremely well-traveled street throughout the day, especially during rush hours. Adding and contributing to this existing condition is a problem she foresees for potential accidents, etc. This type of request was denied many years ago.

4. Mildred Wallin, 4200 Normal Blvd., testified in opposition. She has lived on the property for 40+ years, which then had a two-lane gravel road. They were told there would be a park across the street, which was turned into a mega-apartment complex. Then they needed to improve the street so 5 lanes were constructed and you can hear cars go by all hours of the night. Between 7 a.m. and 9 a.m., it is impossible to get out of the driveway with cars backed up from 40th to 48th Street. Her neighbor has to leave home at 6:00 a.m. in order to get to work by 8:00 a.m. It takes an hour for her other neighbor to get out of his driveway to take his child to school. We have lovely back yards and green spaces. We know our neighbors. There is no crime in our area.

5. Wayne Robidoux, 4230 Normal Blvd., testified in opposition. He is almost center to the property in question. Adding two single family houses means increase in cars, pets, and people coming in and out. He would really be disturbed with that type of traffic. It would really be three single family dwellings because there is already one on the property. We like the privacy, the neighbors and we would not want to be disturbed as proposed.

Response by the Applicant

Burt is not sure it is a density issue or a real traffic issue. The applicants are here seeking what they thought was a fair waiver, increasing the ratio to 6-1 with two single family dwellings. The purpose is to provide an opportunity for the developer to do something other than duplexes. This developer could build two attached single family townhouses in one structure without this waiver. However, they would like the opportunity to build two single family houses that are detached rather than being required to build two single family units that are attached.

Carlson inquired as to what can be developed by right. Tom Cajka of Planning staff stated that they have the area to do the sketch shown in the packet for an additional two lots. The subdivision ordinance requires that any lot shall have maximum depth of 3 times its width. To make the two lots work in the rear, they have to do flag shaped lots, with a driveway up South Street, which is what instigated the waiver request. The subdivision ordinance goes on to say,

however, that the Planning Director may modify this requirement where the lot is occupied or intended to be occupied by the portion of a duplex or townhouse structure. Therefore, the applicant could do the townhouse as suggested, at the Planning Director's discretion. It would require an administrative approval because the lots have to have frontage and access to a street.

Marvin inquired about Analysis #6 which states that it was explained to the neighbors that the proposed subdivision could hinder future subdivision of adjacent properties. Cajka explained that the surrounding lots in this area are very deep, around 300'. The staff was attempting to look further into the future when other property owners might be interested in subdividing to make use out of some of the deeper lots. We met with the neighbors and made some sketches of how that would work, and basically, we looked at doing lots in the center with access onto Normal Blvd. With the deep lots there is adequate room for another street, losing one house that fronts Normal for a street access. The neighbors were not interested in further developing their property. If this waiver is approved, the possibility for other property owners to subdivide in the future may be more difficult.

Carlson is concerned about how the three lots would function in the rear yards of the other properties. He has an inclination to suggest a delay to provide the opportunity for the applicant to have some further design and site discussions with the neighbors. Burt stated that he is not in a position to do that. The owners had talked about building the single family residences themselves, and they have also talked about making the lots available to general contractors, so they do not have a site plan. They will be required to comply with the setbacks of the R-2 zoning district. He would guess that they would end up with a 30' rear yard along the back side. They purposely tried to combine the access points for the two lots with a common access easement. They have widened out the frontage since the meeting with the neighbors due to concerns about drainage. Burt believes the applicants have tried to be good neighbors.

Bills-Strand inquired whether the applicants live on the property in question and Burt indicated that they do not.

Taylor asked for staff's opinion as to how much impact two single family residences would have on traffic. Cajka submitted that the impact to traffic would be minimal--average of two cars per lot equals four cars. Public Works did not have any opposition to the request.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 12, 2003

Duvall moved approval, seconded by Bills-Strand for discussion.

Duvall believes this complies with the community's goal towards density. We are talking about two homes. This is part of the infill policy that we have been promoting.

Bills-Strand indicated that she has mixed feelings because Three Pines Court on "A" Street did not detract from the neighborhood. She sympathizes with the neighbors that live on busy streets with nice back yards to get away from the noisy street. But Three Pines is a good example of infill without an impact on the neighborhood.

Marvin stated that he will vote against the proposal. All of the opposition has lived there for many, many years (all 25+ years). If he had his back yard disrupted after living there for 40 years, he is not sure he would be in favor.

Taylor indicated that he is having difficulty because "we're in a twilight zone"--we do not know what is going to happen to the property. According to our Comprehensive Plan, the idea of building even two residences is not a bad idea, but he believes that there has to be far more consideration for the neighbors and he would feel more comfortable if there were some sort of design plan before the Commission to provide more direction. He does not believe it will create a traffic problem, but there needs to be more consideration for the neighbors, giving them more input into the development. He would rather see a design come forward.

Steward stated that he will vote in favor. First of all, the Commission does not have the authority to ask for a design in this case. We have the very deep flag lots and, even though the residents have lived there with the benefit of that depth for a very long time, technically, he believes the staff's position is correct–that it can be divided and there is room for a normal condition of single family residences. As the applicant pointed out, they will be held to the setback standards as if they were on any other lot in an R-2 setting. This is very much like the circumstances of living adjacent to other properties that are irregularly formed where no one has taken the opportunity to do something about it until one day somebody does decide to develop, and he believes it is the property owner's right. It may infringe upon the pleasure of the adjacent property owners, but it is their right.

Motion for approval carried 5-3: Larson, Bills-Strand, Duvall, Krieser and Steward voting 'yes'; Carlson, Marvin and Taylor voting 'no'.

Note: This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

ANNEXATION NO. 02012;
CHANGE OF ZONE NO. 3423,
FROM AG AGRICULTURAL TO R-3 RESIDENTIAL,
R-5 RESIDENTIAL, O-3 OFFICE PARK AND
B-2 PLANNED NEIGHBORHOOD BUSINESS;
SPECIAL PERMIT NO. 1999,
WILDERNESS HILLS COMMUNITY UNIT PLAN;
and
USE PERMIT NO. 154 FOR OFFICE/COMMERCIAL FLOOR AREA,
ON PROPERTY GENERALLY LOCATED
AT THE SOUTHEAST CORNER OF
S. 27TH STREET AND YANKEE HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: November 12, 2003

Members present: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the community unit plan and use permit.

Ex Parte Communications: None.

Proponents

1. Mike Rierden appeared on behalf of the applicants, presenting this first phase in a rather large development. His client has either fee simple title or land under contract for this entire section, with the exception of a portion in the lower southern corner. This proposal seeks to develop about 112 acres of the total mixed used development of approximately 580 acres.

Rierden explained that the changes of zone are for R-3 (to allow residential development to urban density, basically single family and townhomes); over to the east would be R-5 (higher density residential allowing for apartment and multi-family or townhome development). One of the goals of the Comprehensive Plan is to have higher density residential next to commercial. Going to the west, there is some B-2, which would allow for commercial development--retail, office, restaurants, etc., and then over on the 27th Street side would be the O-3 zoning, which allows for office buildings and which would be a good buffer for the properties to the west across 27th Street. Up in the corner of the B-2 zoning would be a landmark such as you see on the golf course with a waterfall, boulders, and moving water to fit well within the theme already developed on the property to the west.

Rierden stated that the developer has not yet determined whether the R-5 will be multi-family or townhomes. However, one of the conditions of approval requires paths or pedestrian easements to hook the R-5 to the town center, located on what would be 30th Street, and then the rest of the retail development would be larger buildings and parking. The office and restaurant uses would be along Yankee Hill Road and there will be office uses along 27th Street. The balance of the residential would be R-3 in character.

Rierden explained that one of the signatures of this development is going to be a boulevard extending from 27th Street east almost over to 40th Street that will hook up with one of the other elements of this master plan, which would be an employment center. The R-3 would be single family or townhomes.

With regard to the "town center", Rierden believes this will be unique to Lincoln – it is a design lifestyle living with a significant amount of outdoor eating and coffee shops, neighborhood type retail uses, with a circle in the middle for people to gather, which could be blocked off for festivals–a real pedestrian oriented type of town center.

Rierden also submitted design criteria for the town center to which the developer has committed.

Rierden then submitted proposed amendments to the conditions of approval which he believes the developer and the staff have agreed upon.

Steward inquired whether the developer has any notions for residences above the retail in the town center. Rierden indicated that they do have thoughts about having office above but have not discussed residential units on the upper floor; however, he believes it could be considered. Right now there is a provision for some office on the second floor of the town center.

With regard to the amendments to the conditions of approval submitted, Rierden deleted "and pedestrian way easements" from his amendment to Condition #1.1.12 of the special permit and Condition #1.1.13 of the use permit. He also suggested adding, "each containing approximately one acre" to the amendment to Condition #1.1.3 of the use permit.

Rierden also noted that the use permit Conditions #1.1.2 and #1.1.15 talk about the design criteria being applicable to "all buildings" in the B-2 zoning. Rierden requested that the language be changed to specify that it is applicable to the "town center buildings". He also noted that staff wants to make sure the buildings outside of the town center do follow a certain design criteria. The developer has not had time to develop anything for the retail boxes or office buildings and restaurants. Therefore, Rierden proposed adding Condition #1.1.17 to the use permit, "Design criteria for the other buildings in the community center, other than the town center, will be developed by the applicant with written approval of the Planning Director".

The applicant withdrew the waiver requests to which the staff has recommended denial, i.e. sidewalks and sanitary sewer design standards to allow sewer to flow under the centerline of the roadway.

Carlson recalled that some floor area was shifted from the employment center over to the new commercial area. Rierden acknowledged that they have switched the Community Center to 27th & Yankee Hill Road. Brian Will of Planning staff explained that the previous Comprehensive Plan amendment did reduce the light industrial employment center on the west side of this square mile section, and moved it to this corner. In addition, this corner was allowed to include a neighborhood center that is planned for every square mile section. Rierden added that there are approximately 77 acres on 40th Street for the employment center; however, the developer is in discussion with staff on that because there are some drainage issues in that particular area so it may not end up being 77 acres. In approving this, Carlson believes we have removed the opportunity somewhere else, and Rierden does not believe that to be true.

2. Christine Jackson, 9030 Whispering Wind Road in Wilderness Ridge, submitted comments received from residents of Wilderness Ridge. The Wilderness Ridge residents are supporting this proposal, with some reservations. They commend the developer for looking at the entire section at once.

--They do have concerns regarding the size of the development. It was originally showed to the Wilderness Ridge residents as 325,000 sq. ft. – if we add the area to the north (currently planned), it is becoming a very sizable development. When compared to SouthPointe, it does start to look like a pretty large development by adding the community center.

--The Wilderness Ridge residents have talked with the developer about box stores and it was indicated that they are not looking at large box stores such as Walmart, nor quite the size of Kohl's on 84th Street.

--Another neighborhood concern is landscaping and appropriate screening along 27th Street, and Jackson believes this issue has been addressed.

--Lighting is an issue because the Wilderness Ridge neighbors like their rural standards. Jackson pointed out that there was some agreement previously with Williamson Honda to reduce the lighting after the businesses have closed, and she would like to see the same consideration for the dimming of the lights in this development.

--The neighbors are very supportive of the sidewalks. They would like to see this as a very walkable area.

--The neighbors would like consideration for school buses and transit bus stops. They do not have any in Wilderness Ridge at this time.

--The builder has noted his intention to use monument signs and no pole signs, which the neighbors support.

–Jackson requested that the Planning Commission carefully consider the city services that extend to the southern border of the city. There are fire and safety issues and the neighbors would like to see that type of planning for this area of the city.

--Traffic is a concern. 27th and Yankee Hill is going to be a very large intersection with a lot of traffic. Jackson requested that there be parallel planning of the streets as well as the development in a parallel fashion instead of development coming first and the streets coming later. She also requested that there be a traffic study. Now is the time to try to make decisions and changes if needed. We know that 27th Street will be a major south entrance to the city from the beltway and we know that there is some discussion regarding how those entryways to the city would look. There should be opportunity to work with the developers on this issue.

There was no testimony in opposition.

Response by the Applicant

With regard to Dr. Jackson's comments, Rierden stated that the developer will continue to work with the neighborhood and will look into the options for lighting, etc.

Carlson asked Rierden whether there are conditions to address the neighborhood comments about the maximum single building floor area. Rierden stated that there are no conditions; however, the staff report indicates an allowable maximum amount of square footage and the developer is allowed to allocate that total as the developer deems appropriate and as the market dictates. Steward suggested that the applicant note the neighborhood's preference. Rierden agreed and said that they would try to take that into consideration. These use permits are presented with the building envelopes, and as long as the developer does not try to go beyond the total square footage allowable, there are changes that are made. Rierden assured that the developer will keep the neighborhood concerns well in mind.

Bills-Strand stated that she is a resident of Wilderness Ridge and inquired about the a traffic study for this area. With the closing of 14th Street we're starting to see what it is going to be like. Brian Will of Planning staff advised that the applicant was required to do a traffic study with this proposal. Relative to improvements to South 27th and Yankee Hill Road, those are going to be city-funded projects in the CIP. Chad Blahak of Public Works further advised that

Yankee Hill will now be paved from 27th to 40th. As far as widening or improvements, Blahak suggested that typically, with a development that abuts existing rural cross-sections with major entrances, Public Works does require deceleration lanes. With this one, Public Works is suggesting that the widening of 27th Street and Yankee Hill Road be built in conjunction with the commercial development. These streets are in the current CIP. The CIP schedule shows 27th Street from Pine Lake Road to Rokeby in the 2005-06 construction schedule, which does not take into account available funding, and then Yankee Hill Road from 27th to 40th was shown in the 2003-04 or 2004-05 construction schedule, still dependent on funding.

Bills-Strand inquired whether the paving of 40th Street will be extended to Yankee Hill Road to take some of the traffic off of 27th Street. Blahak indicated that to be part of the 27th to 40th Yankee Hill project. We know where the signals are recommended to be located.

Steward inquired about police and fire stations, even though it is beyond the scope of this application but was mentioned by Dr. Jackson. Brian Will stated that, as with all preliminary plats, Police and Fire are included in the review process. We make sure they are given the opportunity to start looking at procuring sites before development occurs. Police and Fire have reviewed this proposal and are not interested in securing any future fire stations in this square mile. However, with the applicant having a development concept plan for the entire mile section, a part of the process included involving LPS, which is looking at a future school site within this section. We have made provision where necessary for those public facilities.

ANNEXATION NO. 02012
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 12, 2003

Taylor moved approval, subject to an annexation agreement, seconded by Bills-Strand and carried 8-0: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward voting 'yes'.

CHANGE OF ZONE NO. 3423
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 12, 2003

Taylor moved approval, seconded by Carlson and carried 8-0: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward voting 'yes'.

SPECIAL PERMIT NO. 1999,
WILDERNESS HILLS COMMUNITY UNIT PLAN.
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 12, 2003

Taylor moved to approve the staff recommendation of conditional approval, with the amendments proposed by the applicant, seconded by Carlson and carried 8-0: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward voting 'yes'.

USE PERMIT NO. 154
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 12, 2003

Taylor moved to approve the staff recommendation of conditional approval, with the amendments proposed by the applicant, seconded by Marvin.

Carlson commended the developer for the "forward thinking" as far as design with the town center, mixed use, and connecting the multi-family with direct pedestrian access, ultimately pulling people into that area. In general, Carlson urged the judicious use of the floor area.

Steward added his personal encouragement that as long as we're modeling and stretching the envelope for design like the town center, that the mixed use opportunities be considered as much as possible. He thinks we are ready for that in this community and this would be a great opportunity for it to be seen and understood.

Motion carried 8-0: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward voting 'yes'.

COUNTY CHANGE OF ZONE NO. 216
FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT S. 162ND STREET AND PELLA ROAD.

This application was withdrawn by the applicant on November 3, 2003.

ANNEXATION NO. 03002;
CHANGE OF ZONE NO. 3411,
FROM AG AGRICULTURAL AND AGR AGRICULTURAL RESIDENTIAL
TO B-5 PLANNED REGIONAL BUSINESS;
and
USE PERMIT NO. 150,
ON PROPERTY GENERALLY LOCATED
AT S. 91ST STREET AND HIGHWAY 2.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 12, 1003

Members present: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward.

Ex Parte Communications: None.

The Clerk announced that the applicant has submitted a written request for deferral until December 10, 2003.

Proponents

1. Kent Seacrest appeared on behalf of **Eiger Corporation**, and amended the applicant's request for deferral until January 7, 2004. The applicant is going to be resubmitting this application and this will give them more time to work with the staff and to work out some access points with the Village of Cheney.

Bills-Strand moved to defer, with continued public hearing and administrative action scheduled for January 7, 2004, seconded by Larson and carried 8-0: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward voting 'yes'.

SPECIAL PERMIT NO. 2039
FOR AUTHORITY TO SELL ALCOHOLIC BEVERAGES
FOR CONSUMPTION OFF THE PREMISES,
ON PROPERTY GENERALLY LOCATED
AT S. 48TH STREET AND HIGHWAY 2.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 12, 2003

Members present: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward.

Staff recommendation: Conditional approval.

Ex Parte Communications: Taylor reported that he visited with a neighbor who had a concern about children coming out of school in that area.

Proponents

1. Mike Alesio of **Valentino's** testified on behalf of the applicant and agreed with the conditions for approval. He stated that he would not repeat the testimony he gave two weeks ago, but reiterated that they moved the door of the premises beyond the 100' distance requirement. Alesio stated that the adjacent neighbors have all approved this and their garages abut the residential property line.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 12, 2003

Larson moved to approve the staff recommendation of conditional approval, seconded by Duvall.

Although absent at the last meeting when the public hearing on this application was held, Bills-Strand advised that she did watch the hearing and did see the testimony previously given.

Duvall believes it is an excellent project and well put together.

Marvin expressed his concern about trying to satisfy both aspects of the ordinance – the 100' and the mitigation. In this case, he drives by that area all the time, the neighbors have to walk three blocks to get over to that property, so what is across the street is retail, to the north is retail and to the south is 48th & Hwy 2 – this is not technically a residential area and it is buffered by lots of retail so he will support it.

Motion for conditional approval carried 5-3: Larson, Bills-Strand, Marvin, Duvall and Steward voting 'yes'; Carlson, Taylor and Krieser voting 'no'.

CHANGE OF ZONE NO. 3399,
AMENDMENTS TO ORDINANCE
NO. 18113 (TITLE 27, IMPACT FEE ORDINANCE).
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 12, 2003

Members present: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward.

Staff recommendation: Approval.

Ex Parte Communications: Commissioner Marvin stated that he visited with Darl Naumann after the last meeting.

Proponents

1. Steve Henrichsen of Planning staff submitted a proposed amendment prepared by the City Attorney. After the last meeting, the staff met with Kent Seacrest and Peter Katt with regard to how category exemptions would be handled on amended applications and the proposed amendment is a result of those discussions. The amendment attempts to provide clarification of the intent; that is, when a project previously was granted a category exemption because there was already a development agreement, if that development comes back through to add some additional development, they must pay for the increment of that addition. This language also clarifies that we are looking for amendments that would increase the impact on the impact fee facility. For example, if you had an arterial street and the project comes back with additional square footage, with some shifting of the types of uses which decreases the trip generation, then potentially there would not be an impact fee on the incremental increase because the impact on the street system was not increased.

Steward commented that we are working from a "City/County" Comprehensive Plan, yet the impact fees are primarily being related to the city finance structure. Why are we not considering both the county and city in this strategy? Henrichsen explained that the proposed amendments relate to the "existing" impact fee ordinance. We are not trying to expand the

original ordinance, but address the economic development criteria already called for in the original ordinance, thus the impact fees only cover infrastructure items provided within the city limits. The ongoing rural acreage studies are looking at the economic impact of acreages within the county.

Carlson suggested that the relationship between this text amendment and the economic development criteria resolution is that the text amendments to Title 27 create the language for the proposed economic development criteria to be implemented.

Marvin wondered how to extract the economic development criteria language if the Commission is not happy with using LB775 as a mechanism for the reductions. Henrichsen explained that the language in the ordinance merely provides that once the criteria has been created, the impact fee administrator is charged with implementing that criteria. That's all it does.

2. Kent Seacrest appeared on behalf of **Ridge Development Company and Southview, Inc.**, and acknowledged that two weeks ago, he asked for the delay to meet with city staff and he now agrees with the proposed amendment. He did talk to the staff because there is some language referring to "the approved development". Seacrest believes that would also include an annexation agreement that might have included three phases, i.e. so that when phases 2 and 3 come, that would have been deemed an "approved development". He agrees with this interpretation. Seacrest also suggested that many of the amendments are the result of the consensus that came out of the Infrastructure Finance Committee process. That process included a variety of suggestions, including issuing bonds and allowing temporary pump stations in certain situations, as well as shifting the sidewalks and two traffic lights within one mile on an arterial out to the infrastructure road fund, which means "it's on the private sector's back". He understood that to be a comprehensive package approach. Seacrest stated that he will not oppose the language on the issue of the traffic lights and sidewalks with the understanding that the administration is still pushing "the package". The effort we are all striving for is to try to find replacement funds. Some of that package never has been acted upon. He has been told that the administration intends to keep pushing for that package.

3. Peter Katt appeared and expressed appreciation for the opportunity to meet with the staff with regard to the proposed amendment, which Katt does not believe fully sets forth the standards that will apply, but it is better than it was. Katt pointed out that we have had this impact fee ordinance for less than a year and it is very important to remember one of the key topics of discussion--one of the key selling points on impact fees was "no more negotiations–you plug in your number and you're done". Katt suggested that this particular amendment revisits negotiations. Impact fees do not do away with negotiations. This must be remembered. They do not eliminate the need to do negotiations and individually tailor how much is going to be paid.

With regard to the traffic lights and arterial sidewalks, Katt believes that to be an indirect impact fee increase already. It did come out of the infrastructure study as a package recommendation. If the Commission adopts the proposed language, it is an increase in the impact fees without a corresponding increase in any other component of the package. "Don't forget what you are doing."

Katt suggested that adding inflation to the impact fee automatically is a change in policy. He believes it is bad policy to have automatic increases built into taxes, permitting fees, etc., without having to go through the public discussion and the public pain that accompanies it to make sure that it is a good policy decision to be made. It should not be automatic and it should not be easy.

But, Marvin believes that inflation is automatic. Katt agreed, but you could make that argument with absolutely every fee and every cost that we have. Marvin stated that all kinds of things are stepped up in taxes with inflation. Katt stated that his point is not that it is not done and not that you can't articulate a good reason to do it. What he is trying to say is that to date, in the city of Lincoln, the city has made a policy choice that permits, fees, licenses, taxes, etc., are not automatically increased by inflation. If we are going to shift to a policy based on inflation, don't pick and choose which ones you are going to do, but make it applicable to all of them. That's the point–have a consistent policy.

Steward inquired whether Katt had recommended language that would satisfy his concerns. Katt suggested that the Commission reinstate the language in 27.82.110(k) that is proposed to be stricken by staff: "Such adjustments in such fees shall become effective upon approval by resolution of the City Council." This takes the "automatic" inflation out.
Henrichsen clarified that if the Commission wants to continue to have any adjustment for inflation to be an act of the City Council, the language on page 100, lines 20 and 21 would not be stricken. This is the text of the ordinance that currently says inflation will be added after approval by the City Council. It has always been the intent that inflation would be added, and the process was that it would take a separate action of the City Council to add inflation. As we discussed the ordinance, we had discussed the idea that inflation would be added, and the figures noted that inflation had not yet been added. A lot of the testimony focused on many of the other items in the ordinance and he does not believe there was a lot of specific testimony on this specific issue; however, Henrichsen believes that the intent was noted that inflation would be added each year.

Steward asked Henrichsen if he agrees that it is an anomaly in terms of other fees and tax structures that we have thus far implemented. Henrichsen believes that Building & Safety does have one fee which does have an automatic increase for inflation, but in general, there are probably a lot of fees of the city that are not automatically tied to inflation.

Marvin pointed out that the impact fees are already set up to increase annually over a period of five years. Does the City Council have to revote that part of the ordinance to implement automatic inflation? Henrichsen stated that the City Council adopted a fee schedule for all five years, 2003-2007.

Bills-Strand offered that typically, when LES wants to raise rates, it has to be justified before the City Council. Henrichsen concurred.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 12, 2003

Bills-Strand moved approval, with the amendment as submitted by staff today, and with amendment to reinsert the language which requires the City Council to approve adjustments to the impact fees so that it is not automatically adjusted with inflation, seconded by Larson.

Bills-Strand believes that the impact fees should be treated the same as all other fees. Let's justify the need to increase and not just assume it is needed.

Carlson moved to amend to delete the language, as recommended by the staff, so that there is automatic inflation, seconded by Marvin.

Marvin stated that there is no question we are going to have inflation and we can inflate the impact fee down over time. He believes it was always understood that there would be this inflation index to impact fees.

Bills-Strand suggested that she can't always give raises that match inflation– she can't always justify her bottom line to match inflation. She does not think that one industry should be tied to inflation and not all of them.

Marvin was concerned about what number will be used each year to add the inflation. Steward pointed out that there is a schedule so he presumes that each fee will be known. Marvin wondered what would happen after the first 5 years. Bills-Strand believes there is a set schedule plus inflation for each year. Marvin was curious about what the Planning Department will recommend to the City Council when they look at inflation. Bills-Strand suggested that at that point they would consider a new plan or take another look at that point in time. It's really no different than LES where they have to justify the need to raise rates.

Carlson commented that during the Comprehensive Plan process, this was discussed and every presentation he attended and every document he had indicated that inflation would be part of the discussion. This is essentially part of the philosophy that was enacted.

Steward declared a point of order. If the motion to amend passes, the automatic inflation stands. The only thing in question is whether the Council will approve it or not. Carlson urged that the original intention and the ongoing debate was that the inflation would be automatic.

Larson believes that automatic indexing is sort of a dangerous thing; however, it needs to be done. He believes we have a good compromise in that we have indexing but we have approval of the City Council each time. This is a way to make sure we're staying in line as we go along. He wants the language left in.

Peo clarified that the ordinance talks about the Council making that analysis each year as to whether inflation should be added. We have picked a month to base the inflationary factor upon and whether or not that could happen automatically. A "yes" vote on the motion to amend means automatic inflation. A "no" vote on the motion to amend gives City Council the authority over inflation.

Motion to amend which strikes, "Such adjustments in such fees shall become effective upon approval by resolution of the City Council", which is the recommendation of the staff, failed 3-5: Carlson, Marvin and Taylor voting 'yes'; Larson, Bills-Strand, Duvall, Krieser and Steward voting 'no'.

Carlson confirmed that nothing has changed with the proposed amendment to 27.82.110 E, regarding the Downtown/Antelope Valley Exclusion Area Map. We're just changing the way it has been referenced.

Marvin inquired again as to what number will be presented to the Council on inflation. Henrichsen believes that each fall, beginning in 2004, the staff will prepare a resolution that would add inflation to the impact fees for the Council's consideration. The City Council can decide whether they want to add inflation or not. If the Council chooses not to add inflation, Marvin wanted to know what number would be presented the following year. Henrichsen assumes that if they fail to add it one year, it could be added the next year. Steward ruled this discussion as nothing but speculative.

Main motion, with amendment as submitted by staff today, and with amendment to reinstate, "Such adjustments in such fees shall become effective upon approval by resolution of the City Council", carried 8-0: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward voting 'yes'.

MISCELLANEOUS NO. 03012,
ADOPTING CRITERIA FOR THE
REIMBURSEMENT OF IMPACT FEES
FOR ECONOMIC DEVELOPMENT.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 12, 1003

Members present: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward.

Staff recommendation: Approval.

Ex Parte Communications: Commissioner Marvin stated that he visited with Darl Naumann after the last meeting.

There was no further testimony by staff (as the applicant).

Support

1. Wendy Birdsall testified on behalf of the **Lincoln Chamber of Commerce** in support. This specific criteria is consistent with the Angelou report completed back in May. That report suggests that we try to streamline the process and provide incentives for business development and expansion. This offers another tool for the Chamber to help with business development and expansion and provides the Chamber with more incentive to help businesses.

Opposition

1. Mark Vasina testified in opposition. As he indicated in his testimony two weeks ago, this proposal has serious flaws. There are major problems with the program's administration and disclosure. The need for this plan has not been established. No evidence has been presented that this conforms with the Comprehensive Plan. This plan inherits the inequities and inefficiencies of LB775. The $12.99 average wage criterion is not a qualifying criterion for LB775. There has not been a cost-benefit analysis. No program to reduce city revenues should be undertaken without a careful evaluation of costs and benefits. The ill-conceived plan does nothing to foster the business expansion goals established for the City of Lincoln. Furthermore, he believes it weakens a newly created program to collect impact fees.

Commissioner Duvall left at this point in the meeting.

2. Todd Paddock, who lives on Irving Street, testified in opposition. This program does not follow the Comprehensive Plan. The Comprehensive Plan does not mention anything about reimbursing impact fees. There has not been a need established; there are no alternative

proposals proposed or compared; there is no cost-benefit analysis. Where is there an analysis showing that incentives like this have a measurable impact on new investments and jobs? Where is the analysis that shows this program is a better investment of public revenues? Where is the analysis showing that this program will provide revenue gains when you take into account the losses that we will have from the reimbursements? This program repeats the mistakes of LB775, such as excluding small businesses and not having a regular review of the program's effectiveness. Where is a provision requiring that the program be independently evaluated each year? He is glad that this proposal makes the information more public than LB775, but he is not sure that all of the information will be made public. Would the summary report to the City Council be made public? LB 775 is a state program and businesses are protected by confidentiality laws. Does that mean that we cannot ask those businesses to make that information public? He concludes that the need for this program is not established and it has too many flaws to go forward. We just agreed on impact fees earlier this year. Let's give them some time to work as they are. We need the revenue. Then evaluate impact fees and see how they are working.

3. Lynn Moorer, attorney, testified in opposition. She recollected the comment made by Commissioner Taylor about the importance of looking beyond the staff recommendations, and she definitely thinks this is an example of that. The first main legal issue is that the plan to piggyback on LB775 is greatly hindered by the fact that LB775 has very tight confidentiality structures and a lot of problems as a program itself. There are four basic things that are available to the public about an individual LB775 company: the original company name, the project location, what they promise to invest in terms of the amount of dollars, and promised new jobs. Those are the only four things that we know about any one of the LB775 companies, something which will now be replicated with the proposed criteria. The qualification for LB775 benefits is confidential information. So the city will not have any way of knowing from the Department of Revenue when the qualification has been met. The state does not track the three-year threshold level. They do not reveal wage levels. There is no wage requirement or wage criterion in LB775 and there is also no way for the public to know when a project is completed. These are some of the major operational and legal difficulties with attempting to use a plan for the city that piggybacks on LB775.

Moorer went on to state that the confidentiality provisions mean that the Department of Revenue cannot share with the city any more information than what is printed in the annual report. The rest of the information in the annual report is all aggregated data by industry type.

The next legal issue is that the Department of Revenue cannot legally administer the city plan for the city. The city has the authority to administer a reimbursement plan on its own, but it is going to take more resources than probably just one person. In addition, the average base minimum wage is not an issue that is a criterion for LB775. The only provision in LB775 regarding wage levels pertains to a requirement that the Department of Revenue estimate

wage levels of jobs created subsequent to the application date. LB775 contains no requirements regarding "qualified jobs". There are only "qualified projects", so the checking that Department of Revenue carries out with respect to jobs or job titles only pertains to looking at the physical activity that these workers carry out to make sure it falls in the right industry sector. Therefore, salaries of high paying executives and low income workers are all averaged together.

Moorer pointed out that there are three time frames that matter to the Department of Revenue. The three-year feature in the city plan is not something that is tracked by the Department of Revenue. The Department of Revenue only conducts an audit of a LB775 company on an irregular basis when it appears there might be a risk that they are not maintaining.

Moorer submitted that another major legal problem is the difficulty in handling appeals. If the criteria is adopted that piggybacks LB775, then it is possible we may not be able to carry out the ordinance with respect to appeals. If you piggyback in the fashion envisioned, she suggested there will be times when the City Council is not going to have access to detailed specific information on which to make detailed findings of fact.

As far as policy issues, Moorer submitted that there are a lot of problems with respect to moving ahead in such a speculative fashion without a cost benefit analysis. LB775 has been used about 500 times, and it now currently costs about 77 million dollars a year. The Commission does not have enough information to move forward on this plan. It is not wise to rely on the "guess" in terms of costs made by the Economic Development director.

Moorer then suggested that the criteria disclosure plans do not improve upon LB775. They replicate all of the same problems with respect to program evaluation--no performance assessment and no greater disclosure. You are not going to know which companies received how many benefits, at what location and how many new jobs were actually created.

Moorer urged that the wiser course of action is to deny this proposal. These criteria are too problematic and the setup is too flawed.

Marvin understood from his discussions with city staff, that if you're good for three years, then you would qualify as a candidate for a refund of the impact fee. Moorer reiterated that the state does not audit annually. They only audit on an irregular basis and the Department of Revenue only does occasional field reviews. Even if they did an annual audit, they could not share the information with the city because it is confidential. They can't even tell you who has qualified for LB775 benefits, even though they may be listed in the report as having applied.

Carlson suspects that the city will say that these companies will sign another level of disclosure providing that information outside of the LB775 loop. Moorer noted that the criteria calls for a letter to be supplied indicating successful "application" from the Department of

Revenue. That only tells you that they have successfully applied–that doesn't tell you anything about qualifying or any one of the other key points. This sort of letter supplied by the company asking for benefits is not objectively verifiable. It is not something the city can verify with the Department of Revenue. This is poor regulatory policy to be looking to declarations from the company that is being regulated. That opens the city up to fraud and abuse. Carlson suggested that the company could sign a disclosure asking the Department of Revenue to send the confirmation that they are LB775 qualified to the city. Moorer believes they can do that, but they have to sign a power of attorney, making the Department of Revenue their quasi-attorney, but when she visited with the head of the Legal Department of the Department of Revenue, he suspected that very few companies would be willing to do that. There is no way that the city can force any company to sign a power of attorney.

Response by the Applicant

Darl Naumann, City of Lincoln, Mayor's Office, Economic Development, reiterated that this was criteria that was submitted at the request of the Planning Department. They were looking to introduce criteria whereby we could actually ask the company to earn the reimbursement. Impact fees are paid by all companies. This is performance criteria based on LB775, allowing a 50% reimbursement for 30 jobs and 3 million dollars investment; 100% reimbursement for 100 jobs and 10 million dollars of investment. This is a performance based criteria. All companies would pay the impact fee up-front and then they would have to be certified by the Impact Fee Administrator.

Marvin asked staff to respond to the audit issue. Michaela Hansen of Public Works acknowledged that the city staff will have to take it upon themselves and the companies will have to work with the city staff. If they want to qualify, they are going to have to provide the information.

Marvin inquired as to how the city is getting the efficiency that was anticipated by piggybacking on LB775. Hansen stated that by using LB775 we know that it is an eligible company making eligible investments. Hansen acknowledged that the city would have to perform the audits in order to hit the 3-year mark. Marvin does not see where the city is getting all of the efficiencies that he had previously understood.
Hansen acknowledged that all the state can confirm is that the company has made application. The company will have to provide the city with a copy of the letter from the Department of Revenue stating that they are eligible and that their application has been accepted. She'll have to do follow-up work with the applicant. This is not a maintenance free situation.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 12, 2003

Larson moved approval, seconded by Taylor.

Marvin does not think this is a good plan. It doesn't accomplish a whole lot. He does not believe it dovetails into creating biotech firms. It doesn't create an incentive. He has looked at what we are talking about when we do a 3 million dollar building in this town. You might hire 50 workers and the impact fee would be about $50,000. You have to hire more than 30 people because they won't all be eligible jobs. You will have payroll of 1.5 million; you have to provide debt service. To get your 50% of $50,000, you would have payroll and other expenses of 10-12 million dollars. It's just a tiny piece of the puzzle. Why don't we just have automatic inflation? Here we create a process that is simply a way to avoid a public process, and we may not like it, but it doesn't answer the question of creative incentive to come to Lincoln and it does not mesh with the goals. We have the state setting standards for what they want to bring business to the state, but those goals may not be what we want for the city of Lincoln.

Larson acknowledged that he voted for impact fees, but the one thing that bothered him was the impact on commercial buildings. This is a partial answer to that. It doesn't take care of it all but it gives the economic development people a tool which they can use that they don't have now.

Bills-Strand agreed with both Marvin and Larson. She is not sure that this is the best avenue, but it is an avenue we have for now. She would like to see the city go forward with a bigger plan than this. This isn't going to bring people to Lincoln.

Carlson agreed. We need to do a lot more. He does not know that this will bring anyone to town. He understands the arguments – all are a function of momentum and time. We have a focus right now that we create an economic development plan and he just thinks we can do so much better. He is not sure the $12.99 wage is going to put forward the goals that we want. We need to be aggressive in a good sense – we need to think bold and broad. There are mechanical difficulties with this. He is sure that we could do a lot better. He would like to see some of the resources that Marvin was talking about, and find a way to do big creative projects to get those big high-tech employers that are called for in the Angelou report.

Marvin does not believe that we've done our job for economic development with this plan. Read the Angelou study. It says that in the 1990's, Lincoln wages grew at the slowest rate of its peer group. If we want to address economic development so that we can provide help, let's not fool ourselves and say we're doing it by tacking onto a LB775 scheme. He would like to put this on pending for six months to see what the city can come back with.

Marvin moved to amend the main motion to place this on pending for six months, seconded by Carlson.

Bills-Strand asked staff whether there is the ability to negotiate impact fees at this point in time, with City Council approval. Henrichsen confirmed that to be true. If the economic

development criteria is delayed, staff would have to withdraw the portion of the previous text amendment (Change of Zone No. 3399) that dealt with the economic development criteria as it goes forward.

Larson agrees that what is proposed is not enough, but that is what was given to us. He will agree with the deferral.

Steward stated that he will vote to defer. We don't even have much experience yet of collecting the impact fees, yet we're beginning to say that we're collecting more than we need. That is not a good message when we don't have the experience yet. Another concern is the whole idea of incentive. This city dramatically needs incentive packages, but there are other conditions of the plan that need more incentives. Low income housing will never stand on its own without incentives. Infill and downtown redevelopment does not stand on its own without incentives. And the first one we pop up with is one that already seems to work fairly well. Tying it to LB775 is a mistake. It is already in trouble. On an operational basis, he has concern about tying this to the building permit process. It gives the first advantage to the developer, but in question and in doubt is who and when and how does the business that the developer is speculating on getting get into the line for the incentive. Overall, it is just too soon.

Bills-Strand suggested that the staff could bring something forward whenever they are prepared and not have to wait six months. Marvin thinks that six months is reasonable.

Rick Peo of Law Department advised that until the impact fee ordinance is actually amended it is a discretionary decision of the City Council and he doubts they will make that amendment until they have the economic development criteria before them. Staff will likely recommend that the City Council keep the discretion until the economic development criteria comes forward.

Motion to place on pending for six months carried 7-0: Larson, Carlson, Bills-Strand, Marvin, Taylor, Krieser and Steward voting 'yes'; Duvall absent.

ITEMS NOW ON THE AGENDA

Members present: Larson, Carlson, Bills-Strand, Marvin, Duvall, Taylor, Krieser and Steward.

The Commission briefly discussed ex parte communications with Rick Peo. Peo suggested that the whole idea of revealing the outside communication is to give the rest of the Commission the factual content of that communication. Thus, the Commissioners should disclose who they had the conversation with and what was discussed. All information needs to be disclosed so that all of the other members have the same facts.

There being no further business, the meeting was adjourned at 4:25 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on November 26, 2003.

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